

AN ACT

ENTITLED, An Act to revise certain provisions regarding directed trusts to include custodial accounts.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 55-1B-1 be amended to read as follows:

55-1B-1. Terms used in this chapter mean:

- (1) "Instrument," any revocable or irrevocable trust document created inter vivos or testamentary or any custodial account agreement;
- (2) "Trust protector," any disinterested third party whose appointment is provided for in the instrument;
- (3) Repealed by SL 2005, ch 260, § 2.
- (4) "Fiduciary," a trustee or custodian under any instrument, an executor, administrator, or personal representative of a decedent's estate, or any other party, including a trust advisor, a trust protector, or a trust committee, who is acting in a fiduciary capacity for any person, trust, or estate;
- (5) "Excluded fiduciary," any fiduciary excluded from exercising certain powers under the instrument which powers may be exercised by the grantor, custodial account owner, trust advisor, trust protector, trust committee, or other persons designated in the instrument;
- (6) "Investment trust advisor," a fiduciary, given authority by the instrument to exercise all or any portions of the powers and discretions set forth in § 55-1B-10;
- (7) "Distribution trust advisor," a fiduciary, given authority by the instrument to exercise all or any portions of the powers and discretions set forth in § 55-1B-11;
- (8) "Custodial account," an account, established by a party with a bank as defined in 26 U.S.C. 408(n), as of January 1, 2006, or with another person approved by the Internal

Revenue Service as satisfying the requirements to be a nonbank trustee or a nonbank passive trustee set forth in U.S. Treasury Regulations promulgated under 26 U.S.C. 408, that is governed by an instrument concerning the establishment or maintenance, or both, of an individual retirement account, qualified retirement plan, Archer medical savings account, health savings account, Coverdell education savings account, or any similar retirement or savings vehicle permitted under the Internal Revenue Code of 1986, as of January 1, 2006;

- (9) "Custodial account owner," any party who establishes a custodial account; or has the power to designate the beneficiaries or appoint the custodian of the custodial account; or otherwise is the party who possesses the power to direct the investment, disposition, or retention of any assets in the custodial account or name an authorized designee to effect the same.

Section 2. That § 55-1B-2 be amended to read as follows:

55-1B-2. An excluded fiduciary is not liable, either individually or as a fiduciary, for either of the following:

- (1) Any loss that results from compliance with a direction of the trust advisor, custodial account owner, or authorized designee of a custodial account owner;
- (2) Any loss that results from a failure to take any action proposed by an excluded fiduciary that requires a prior authorization of the trust advisor if that excluded fiduciary timely sought but failed to obtain that authorization.

Any excluded fiduciary is also relieved from any obligation to perform investment or suitability reviews, inquiries, or investigations or to make recommendations or evaluations with respect to any investments to the extent the trust advisor, custodial account owner, or authorized designee of a custodial account owner had authority to direct the acquisition, disposition, or retention of any such

investment.

Nothing in subdivision (2) imposes an obligation or liability with respect to a custodian of a custodial account.

An Act to revise certain provisions regarding directed trusts to include custodial accounts.

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I certify that the attached Act  
originated in the

HOUSE as Bill No. 1185

\_\_\_\_\_  
Chief Clerk  
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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1185

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor  
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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor  
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STATE OF SOUTH DAKOTA,  
ss.  
Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State